

### Remarks

This is an international application filed under the Patent Cooperation Treaty (PCT) on February 28, 2000.

In the office action mailed September 3, 2003 the examiner rejected claims 1, 4-6, 8-10 and 14 under 35 U.S.C. §103(a) for allegedly being unpatentable over EP 330,261. The examiner also indicated that claims 9 and 10 are objected to for being dependent on a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

In response to the rejections applicants provide the following distinguishing remarks that are believed to place the present case in condition for allowance. Favorable reconsideration of all of the pending claims is respectfully requested.

Initially, applicants attach hereto a copy of the Journal articles lost by the Patent Office. Return of the previously submitted PTO-1449 form initialed as appropriate is respectfully requested.

Regarding the art rejection of record applicants provide the following distinguishing remarks.

EP 0 330 261 (EP'261) is relied on by the examiner to reject the pending claims. Applicants respectfully submit that EP'261 does not render the claimed invention unpatentable.

EP'261 generally describes fabric softening compositions containing 2-hydroxypropyl monoester quaternized ammonium salts. Such monoester quats are obtained by a process that utilizes **epichlorohydrin** as a starting material. The

examiner correctly noted that the compounds of claim 1 are distinguishable over the compounds of EP'261 in that they contain a methyl group as a substituent. Thus, it is clear that the compounds of claim 1 are derived from an ester group-bearing moiety containing at least **four** carbon atoms, whereas the compounds of EP'261 are derived from an ester group-bearing moiety containing **three** carbon atoms. EP'261 clearly does not disclose or suggest compounds that are derived from an ester group-bearing moiety containing at least **four** carbon atoms

Further, applicants found that the compounds of the invention can be prepared by further reacting substituted amino-2-hydroxy 3-butene with 1-2 moles of fatty acid per mole of this product. This process leads to the 2-hydroxy-3-butene derived compounds of the present invention, which have a very clear and significant advantage over the epichlorohydrin derived compounds of EP'261, i.e., **they are halogen free**. EP'261 clearly does not disclose or suggest applicants' method of making such halogen-free compounds.

Finally, applicants demonstrated that the claimed 2-hydroxy-3-butene derived halogen-free compounds are useful as fabric softeners. EP'261 fails to disclose or suggest such compounds, or their utility as fabric softeners, and, applicants submit, that one would NOT be able to conclude that the claimed quats would have the same properties as those of the prior art.

In summary, applicants submit that it is clear that:

i. EP'261 does not disclose or suggest the claimed compounds that are derived from an ester group-bearing moiety containing at least **four** carbon atoms;

ii. EP'261 does not disclose or suggest a method of making such **2-hydroxy-3-buten d rived halog n-fre compounds**; and

iii. EP'261 fails to disclose or suggest the utility of such halogen free compounds as fabric softeners.

In view of the foregoing applicants respectfully submit that the present rejection is improper; reconsideration and withdrawal thereof is respectfully requested.

Therefore, in view of the distinguishing comments presented herein, the present case is believed to be in condition for allowance, which action is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ralph J. Mancini", written over a horizontal line.

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